SUPREME COURT, U. S.

MAR 25 1969

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

No. 1039

OCTOBER TERM, 1968

M. ELIZABETH GAIR,

Petitioner,

against

ROBERT L. GILL and EDWARD G. SWEENEY,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

LEON LEIGHTON,
Guardian ad Litem
6 East 45th Street
New York, N.Y. 10017
MU 2-2361

TABLE OF CONTENTS

	PAGE
Orders and opinions of the Courts below	1
Jurisdiction of this Court	3
Statement of the Case	3
No question under the Federal Constitution is involved	4
Conclusion	5
Appendix A—Opinion of Supreme Court (New York Law Journal, July 7, 1967)	1a
Appendix B—Order of Appellate Division of New York Supreme Court, dated August 23, 1968	2a
Appendix C—Order of Appellate Division of New York Supreme Court, dated September 19, 1968	5a
Appendix D—Paragraphs 4 through 19 of guardian's affidavit dated December 31, 1968, submitted in New York Court of Appeals	7a
Appendix E—Letter from guardian to petitioner's attorney, dated August 2, 1968	12a

TABLE OF CASES

Fay v. *New York*, 332 U.S. 261 (1947)	4
Jackson v. *New York*, 391 U.S. 928 (1968), denying certiorari in *People* v. *Jackson*, 20 N Y 2d 440, 231 N.E. 2d 722 (1967)	4
Mayer v. *Liebmann*, 16 App. Div. 54, 44 N.Y. Supp. 1067 (1897)	4

PAGE

Root, Matter of, 8 Paige, 625 (1841) 4

Werner v. *Interurban Street R. Co.*, 99 App. Div. 592, 91 N.Y. Supp. 111 (1904) 5

Williams, Matter of, 157 N.Y. 704, 52 N.E. 1126 (1898) 4

STATUTES AND RULES

Supreme Court Rule 19 3

New York Mental Hygiene Law, § 101 3

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The petition for certiorari herein is opposed because it seeks to enlarge to constitutional dimensions a run-of-the-mill order of the Appellate Division of the New York Supreme Court, dismissing an appeal because of inexcusable failure of petitioner to comply with reasonable calendar rules after having been given ample warning of the consequences of such failure.

(a) Orders and opinions of the Courts below

1. The controversy stems from an order of the Supreme Court of the State of New York, confirming the findings of a jury which found petitioner to be an incompetent person, and appointing a committee of her person and property. The order is reproduced in the petition (pp. 38-45).

2. The petition does not reproduce the opinion of the Supreme Court. That is not reported officially, but was printed in the New York Law Journal on July 7, 1967. It is annexed as Appendix A hereto.

3. By order dated August 23, 1968, the Appellate Division of the New York Supreme Court dismissed the appeal from the foregoing order. This order, which is the real basis of petitioner's grievance, has not been reproduced in the petition. It is annexed as Appendix B hereto. While the Court wrote no opinion, the recitals in the order sufficiently indicate the reasons for its action.

4. By order dated September 19, 1968, the Appellate Division denied petitioner's motion for an order to vacate the foregoing order of August 23. This has not been reproduced in the petition, and is annexed as Appendix C hereto. No opinion was written.

5. By order dated November 14, 1968, the Appellate Division denied petitioner's motion for leave to reargue the motion denied by the order dated September 19, or, in the alternative, for leave to appeal to the Court of Appeals. This order is reproduced in the petition (pp. 36-7). No opinion was written.

6. By order dated January 16, 1969, the New York Court of Appeals dismissed a motion for leave to appeal from the order of September 19, "upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution (*Body* v. *Roosevelt Raceway, Inc.*, 17 N. Y. 2d 505; *Kalamon* v. *Kalamon*, 287 N. Y. 755)." This order is reproduced in the petition (p. 35). No opinion was written, but the foregoing extract from the order indicates the Court's reasoning.

(b) Jurisdiction of this Court

The petition (p. 3) seeks to invoke the jurisdiction of this Court pursuant to Rule 19, subd. 1(b). But that provision is applicable only to appeals from United States Courts of Appeals.

The only basis for invoking jurisdiction herein is subdivision 1(a). Petitioner has not discharged the burden of showing how the state court, in disposing of this routine calendar problem, "has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

Statement of the Case

The recitals in the Appellate Division order of August 23, 1968 (Appendix B hereto) should be determinative of the issue. However, in view of the claim that the dismissal of her appeal has deprived petitioner of rights under the Fourteenth Amendment, a brief recital of the pertinent facts may be helpful.

1. Respondent was duly appointed by the New York Supreme Court as guardian ad litem for petitioner, upon the institution of a proceeding to inquire into her competency, pursuant to New York Mental Hygiene Law, § 101.

2. The guardian's position before both appellate courts is fully stated in his affidavit in the Court of Appeals, dated December 31, 1968. In view of the fact that no printed record has been served, there is annexed as Appendix D hereto paragraphs 4-19 of that affidavit. The letter from the guardian to petitioner's attorney, dated August 2, 1968, putting him on notice that it was essential to prosecute the appeal with diligence (Exhibit B to that affidavit) is annexed as Appendix E hereto. The other exhibits recited in that affidavit are not material to the present petition.

No question under the Federal Constitution is involved

Respondent respectfully submits that a court's reasonable control over its own calendar, which is all that is involved here, does not rise to constitutional dimensions. However, since the petition does specify certain constitutional claims which petitioner seeks to have considered by this Court, it is desirable to show that those claims have no merit.

1. The trial was held before a Commissioner rather than a Justice of the Supreme Court (Petition, pp. 15-16).

The provision authorizing such a trial has been in the New York statutes since earliest times. Adjudications of incompetency after a trial before a Sheriff's Jury presided over by a Commissioner or Commissioners have been affirmed by the New York Court of Appeals on a number of occasions. See, e.g., *Matter of Williams*, 157 N.Y. 704, 52 N.E. 1126 (1898). Regardless of the alleged claim that "the statute does not provide guidelines," it has likewise been held since earliest times that the Commissioner should be a lawyer, as he was in this case, *Matter of Root*, 8 Paige, 625, 627 (Walworth, Chancellor, 1841).

2. The trial was held before a Sheriff's Jury, made up of fourteen persons, eight of whom were from the Sheriff's Panel, and six of whom were from the regular New York County jury panel (Petition, pp. 16-22).

This does not violate the Federal Constitution. *Jackson* v. *New York*, 391 U.S. 928 (1968), denying certiorari in *People* v. *Jackson*, 20 N Y 2d 440, 456-7, 231 N.E.2d 722, 723-4 (1967); *Fay* v. *New York*, 332 U.S. 261 (1947).

3. The guardian and his wife had some casual conversations with some members of the jury (Petition, pp. 22-3).

The Trial Court found that "the extent of such talks as developed before me under oath and vigorous cross-examination, were innocuous, unrelated to anything concerning the case or trial, and absolutely irrelevant, forming no basis for the granting of a motion for a mistrial" (see Appendix A hereto). Those conversations raised no constitutional issue. *Werner* v. *Interurban Street R. Co.*, 99 App. Div. 592, 595, 91 N.Y. Supp. 111, 113 (1904). This is especially so since the motion for a mistrial was made long after petitioner's attorney was aware of the conversations, and just prior to submission of the case to the jury. *Mayer* v. *Liebmann*, 16 App. Div. 54, 57-8, 44 N.Y. Supp. 1067, 1069-70 (1897).

Conclusion

For all of the foregoing reasons, it is submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

Leon Leighton
Guardian ad Litem

Appendix A

Opinion of Supreme Court (New York Law Journal, July 7, 1967)

Matter of Gill (Gair):

Petitioner moves for a final order confirming the inquisition and findings herein and respondent cross-moves for an order denying the commissioner's report and for a further proceeding before an ordinary petit jury.

After a reading of the minutes of the inquisition, I have concluded that upon all the evidence adduced, the incompetency of the respondent has been conclusively established, and, accordingly, the unanimous verdict of the jury of fourteen and the report of the commissioner are confirmed.

There were no prejudical errors committed by the commissioner in connection with his conduct of the trial. While the conversations had between the guardian ad litem and his wife and a member or members of the jury in the informal surroundings of the sheriff's jury quarters in the Surrogate's Court were thoughtless and unnecessary, the extent of such talks as developed before me under oath and vigorous cross-examination, were innocuous, unrelated to anything concerning the case or trial, and absolutely irrelevant, forming no basis for the granting of a motion for a mistrial.

Respondent further claims that the use of a sheriff's panel (a blue ribbon jury), although the instant one ultimately included four members of the county jury list, invalidated the proceedings and raised "legal problems of violation of statute and denial of equal protection of the law and due process of the law." Such contention is wholly without merit (see *Fay* v. *New York*, 332 U. S. 261).

The parties having resolved the questions raised by the supplemental cross-motion in connection with reimbursement, the same is denied as academic.

Settle order in accordance with the above, providing in blank for the designations of committees of the person and property of the respondent.

That portion of the proceedings relating to the fixing of fees of respondent's counsel is held in abeyance pending the applications by others for fees and allowances.

Appendix B

Order of Appellate Division of New York Supreme Court, dated August 23, 1968

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 23rd day of August, 1968.

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION: FIRST DEPARTMENT

(Supreme Court Index Number 41756/67)

Index No. M-5181

ORDER DISMISSING APPEAL

In the Matter of the

Application of ROBERT L. GILL and EDWARD G. SWEENEY,
Petitioners-Respondents,

for the Appointment of a Committee of the Person and Property of M. ELIZABETH GAIR,
an alleged Incompetent Person,
Respondent-Appellant.

The respondent-appellant having appealed to the Appellate Division of the Supreme Court, First Judicial Department, from an order of the Supreme Court of the County of New York, entered in the office of the County Clerk of

Appendix B

the County of New York on the 31st day of July, 1967, confirming the findings of the jury as to incompetency and adjudging and decreeing M. Elizabeth Gair to be incompetent to manage herself and her affairs and appointing a Committee of her Person and Property, and Leon Leighton, Esq., Guardian *ad Litem* herein, having moved to dismiss said appeal and this Court by its order dated the 25th day of April, 1968 having unanimously ordered that the said motion to dismiss the appeal was granted unless the respondent-appellant perfected the appeal for the September, 1968 Term of this Court and having further ordered that upon failure to so perfect the appeal an order dismissing that appeal may be entered ex parte, and respondent-appellant having moved for an enlargement of time to the November, 1968 Term of this Court within which to perfect her appeal and this court by its order dated the 18th day of July, 1968 having denied the said motion with costs, and Vito F. Lanza, having by order to show cause dated August 1, 1968 returnable September 3, 1968, requested an order directing that the respondent-appellant's time to perfect this appeal be extended to the December, 1968 Term of this court and that the time to perfect the appeal be forthwith extended until the determination of such application and further order of this court, and the Honorable Harold A. Stevens, Justice of this Court, after hearing argument on August 1, 1968, having stricken from said order to show cause the provisions for a stay extending respondent-appellant's time within which to perfect this appeal until further order of the Court, and respondent-appellant having failed to serve and file any of the papers required to be filed and served under Rule 5530 of the Civil Practice Law and Rules and in all respects having failed to perfect the appeal for the September 1968 Term of this Court as provided by order of this court dated the 25th day of April, 1968.

Appendix B

Now, upon reading and filing the statement of Vivian F. Gentleman, attorney for the petitioners-respondents, and upon the notice of appeal herein, the order of this court dated the 25th day of April 1968, the order of this court dated the 18th day of July, 1968 and the order to show cause dated the 1st day of August, 1968, it is

ORDERED, that the appeal herein from the order of the Supreme Court, New York County, entered on the 31st day of July, 1967, be and the same hereby is dismissed.

Enter

/S/ HYMAN W. GAMSO
Clerk

Appendix C

Order of Appellate Division of New York Supreme Court, dated September 19, 1968

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 19th day of September, 1968.

PRESENT:

HON. HAROLD A. STEVENS, *Justice Presiding*
" SAMUEL W. EAGER,
" LOUIS J. CAPOZZOLI,
" OWEN McGIVERN,
" BENJAMIN J. RABIN.
Justices.

M-5557

In the Matter of the Application of

ROBERT L. GILL and EDWARD G. SWEENEY,
Petitioners-Respondents,

for the appointment of a Committee of the Person and Property of M. ELIZABETH GAIR, an alleged incompetent person,
Respondent-Appellant.

The above named respondent-appellant having moved this Court for an order vacating the order of this Court, entered on August 23, 1968, which order dismissed, for lack of prosecution, appellant's appeal from an order of the Supreme Court, New York County, entered on July 31, 1967; and for other relief,

Appendix C

Now, upon reading and filing the order to show cause, with proof of due service thereof, and the affidavit and memorandum of Vito F. Lanza and the affidavit of Leon Leighton in support of said motion, and the statement of Vivian F. Gentleman in opposition thereto, and after hearing Messrs. Vito F. Lanza and Leon Leighton for the motion, and Vivian F. Gentleman opposed,

It is hereby unanimously ordered that the said motion be and the same hereby is denied with $10 costs.

ENTER.

HYMAN W. GAMSO

.....

Clerk

Appendix D

Paragraphs 4 through 19 of Guardian's affidavit dated December 31, 1968, submitted in New York Court of Appeals

* * *

A. Mr. Lanza's Position in the Matter

4. The Guardian has always acknowledged that Miss Gair, while properly found to be incompetent, did have some lucid moments; and that in such lucid moments she desired to have Mr. Lanza represent her in this proceeding. The Guardian therefore acknowledges that Mr. Lanza had authority to retain Mr. Cooperstein to represent the incompetent in the inquisition; Messrs. Goldstein, Judd & Gurfein to represent her in opposition to the motion to confirm the inquisition and on the appeal therefrom; and Mr. Shapiro to represent her on the instant motion.

5. The Guardian's difference of opinion with Mr. Lanza arises from the fact that Mr. Lanza, an unmarried man of seventy, was making every effort to persuade Miss Gair, a spinster of ninety, with an estate of $1,800,000, to marry him. He courted her most assiduously, sent her the most endearing notes, and was arranging to take an ocean voyage with her. She told me on one of my early visits that he could marry her any time he wanted to, and invited me to be best man at the wedding. Every effort on my part to get a commitment from Mr. Lanza that no such step would be taken while this proceeding was pending was unsuccessful, until Mr. Justice Levey required him to make such a stipulation on the motion for an inquisition before the Sheriff's Jury.

6. Under all the foregoing circumstances, it was incumbent on Mr. Lanza to see that the appeal from the adjudication of incompetency proceed with more than deliberate speed. The order of adjudication was entered on July 28, 1967. The following chronology will show why the Appellate Division properly found inexcusable delay in prosecuting the appeal.

Appendix D

B. Chronology of Proceedings up to the Order of Dismissal

7. The order of adjudication was served on August 4, 1967. The notice of appeal was served by Messrs. Goldstein, Judd & Gurfein on August 30.

8. Subsequently, those attorneys made two motions in the Supreme Court: (a) for an allowance of a counsel fee to prosecute the appeal; and (b) the payment of the expenses of printing the record out of the incompetent's estate. The Guardian opposed the former motion, on the ground that there was no statutory authority therefor (Mental Hygiene Law, §101[9][b]), though conceding that the attorneys might bring a plenary action against the Committee of her property for the fair value of their legal services. *Matter of Hardy*, 26 App. Div. 164, 166 (1st Dept. 1898). The Guardian supported the application for the payment of the expenses of printing the record, on the ground that, even though the appeal had little merit, it was not so frivolous as to preclude the incompetent's right to review.

9. After a number of adjournments, both motions were denied by Mr. Justice Levey by orders entered January 8, 1968, on the ground that there was no statutory authority therefor.

10. Messrs. Goldstein, Judd & Gurfein then took an appeal from both orders, and made a motion in the Appellate Division to prosecute those appeals on behalf of the incompetent as a poor person. By order entered March 15, 1968, the Appellate Division granted the motion to the extent of permitting the appeals to be heard on the original record and on typewritten briefs.

Appendix D

C. The Appellate Division's Order of Dismissal

11. On April 2, the Guardian moved to dismiss the appeal from the order of adjudication unless it were perfected for the June 1968 Term. By order entered April 25, the Appellate Division granted such motion unless the appeal were perfected for the September 1968 Term.

12. On June 28, the Appellate Division entered orders affirming the orders of Mr. Justice Levey which denied the applications of Messrs. Goldstein, Judd & Gurfein: (a) for counsel fees and (b) for payment of the expenses of the appeal out of the incompetent's estate.

13. On June 17, Messrs. Goldstein, Judd & Gurfein moved in the Appellate Division for an order permitting the appeal from the order of adjudication to be perfected for the November 1968 Term. The reasons assigned for the impossibility of perfecting the appeal for the September 1968 Term were (a) the Court had not yet decided the two appeals described in the preceding paragraph; and (b) "I [Mr. Judd] may no longer be available for the preparation of the record and brief and will have to acquaint one of my partners with all the facts." The latter was apparently a reference to Mr. Judd's prospective appointment as United States District Judge for the Eastern District of New York, which had been mentioned in the newspapers.

14. By order entered July 18, the Appellate Division denied the motion for enlargement of time. By that time, the Appellate Division had already affirmed the two orders specified in ¶12, *supra*, so that it did not consider reason (a) to be sufficient to warrant delay. It also must have found reason (b) to be untenable, especially since both the attorney for petitioners and the Guardian pointed out that

Mr. Judd's firm, as well as he himself, had actively participated on the motion before Mr. Justice Levey to confirm the inquisition.

15. At that time, there was no justification for any further delay. The Appellate Division had spoken twice, once in granting the motion to dismiss the appeal unless it were perfected for the September 1968 Term; and then in denying the motion for enlargement of time, with all the pertinent facts before it. Messrs. Goldstein, Judd & Gurfein, or if they wished to withdraw, any substituted attorney selected by Mr. Lanza, would have sufficient time to write the brief. There was no problem involved in preparing the record. While no express motion had been made here to submit the appeal on the original record, all of the parties (including Mr. Lanza) consistently assumed that, since the Court had given such relief in respect to subsidiary orders, it would certainly grant such relief in regard to the extensive record involved in the order of adjudication. Mr. Lanza had received a copy of the typewritten record at the inquisition, and subsequently did have the Clerk of the Supreme Court certify the original record to the Appellate Division.

16. Nevertheless, the only step taken in regard to the appeal was a motion made by Mr. Lanza on July 31 for an order directing that the time of appellant to perfect her appeal from the order of adjudication be extended to the December 1968 Term. Since September 3 was the first motion day of the Appellate Division, Mr. Lanza sought a temporary stay pending determination of the motion from Mr. Justice Stevens. The reasons assigned were that Mr. Judd had since been appointed a United States District Judge, that Mr. Lanza had been in the hospital for extended periods, that his brother had died, and that he had been unable to obtain other counsel.

Appendix D

17. The Guardian took the position that, under the circumstances, it might be reasonable to extend appellant's time to perfect the appeal only until the October 1968 Term. Copy of my opposing affidavit, sworn to August 1, 1968, is submitted as Exhibit A herewith.

18. Mr. Justice Stevens denied the application for a stay. However, I stated that I would not enter the order of dismissal *ex parte*, though permitted to do so, until Mr. Lanza's motion could be heard by the full Court on September 3. I wrote Mr. Lanza a letter on August 2, explaining why the interests of the incompetent would be fully protected if the extension were limited to the October Term, instead of the December Term as requested. Copy of this letter is submitted as Exhibit B herewith.

19. The Appellate Division had all of these facts before it on Mr. Lanza's original motion for an extension of time, and on Mr. Shapiro's motion for reargument and for leave to appeal to this Court. Having all of these facts, and giving due consideration to the matter, the Appellate Division decided that the ends of justice would be adequately served by adhering to its dismissal of the appeal because of the inexcusable failure to prosecute the same.

• • •

Appendix E

Letter from Guardian to petitioner's attorney, dated August 2, 1968

LEON LEIGHTON
6 East 45th Street
New York 17, N. Y.

August 2, 1968

Vito F. Lanza, Esq.
32 Court Street
Brooklyn, New York 11201

Re: M. Elizabeth Gair

Dear Mr. Lanza:

As I stated yesterday at the argument before Mr. Justice Stevens, considerations of fairness persuade me not to enter an *ex parte* order, in accordance with this Court's order of April 25, 1968, permitting entry of such an order if the appeal is not perfected for the September 1968 Term. That was in order to give you an opportunity to have your request for a further extension of time heard by a full Bench on September 3rd.

In view of the foregoing order of this Court, its order of July 18, 1968, denying the motion for an enlargement of time to the November 1968 Term, and Mr. Justice Stevens' striking out of the provision for extension of time in your proposed order to show cause, I think it clear that the appeal must be perfected for the October 1968 Term. In the event of your failure to do so, the mandate of the Court for dismissal should be carried out. This indulgence, an additional month, grants you all the personal consideration which the circumstances warrant, and adequately protects the interests of the incompetent.

I will submit a copy of this letter to the Court on September 3rd with my supplemental affidavit in opposition to your application.

Appendix E

1. As more fully set forth in my affidavit of August 1st, the forty days from yesterday to the date when appellant's record and brief are due, if the case is set for the October Term, are more than adequate. I have always assumed that the Court's order of March 12, 1968, permitting the appeal to be heard on the original record and on typewritten or reproduced appellant's points, applies to the appeal from the order of adjudication, though it was made in connection with the appeal from the order denying payment of the expenses of the appeal out of the incompetent's estate. To remove any question on this point, I will make a cross-motion on September 3rd, to have this order apply to the appeal from the order of adjudication, and assume it will be granted.

2. An additional factor emphasizes the conclusion that forty days is more than adequate for briefing. The lawyer who briefs the case will not have to go into the matter cold.

Goldstein, Judd & Gurfein, which includes the firm as well as Judge Judd, did a substantial amount of work on all of the problems involved in the appeal, as is more fully set forth in Appendix A hereto, containing extracts from the affidavits and briefs which they have filed in this Court and in the Supreme Court. In this connection, it may be noted that Mr. Rubin of that firm participated in all of the briefs, conferred with me on several occasions, and that Judge Judd's affidavits refer continuously to the fact that his firm, as well as he himself, was involved in the matter (see Appendix A). There is some question in my mind whether the firm can thus withdraw from representation of an incompetent without court approval, after their motion for enlargement of time was denied because of Judge Judd's appointment. In any event, I assume that they would feel a moral obligation to confer with the lawyer who is writing the brief, and give him the benefit of their thinking on the matter, to supplement such material as he can gather from the affidavits and briefs heretofore filed.

Appendix E

3. You yourself participated actively in the inquest, and your name appears on all of the briefs filed. With due regard for your disability, you should be able to give substantial assistance to the lawyer writing the brief.

4. Your affidavit of July 30, 1968 (¶ 11) refers to the difficulty of securing counsel, "particularly because there was no certainty (in view of the unsettled law) that such counsel is to be paid for his services." I assume there are counsel who are willing to undertake this assignment in the hope that either (a) they will prevail in reversing the order and obtaining an adjudication of competency on a retrial, in which event they will be paid by Miss Gair; or (b) even if unsuccessful, they may recover in a plenary action under the holding of the First Department in *Matter of Hardy,* 26 App. Div. 164.

5. If there is real difficulty in obtaining counsel, that is no justification for departing from previous orders of this Court fixing the time limitation. Your desire to have a specific counsel who has indicated a willingness to handle the matter does not justify defering the argument of the appeal until the December 1968 Term, with final determination not probable until January 1969, in view of the fact that the order of adjudication was made in June 1967, the incompetent is now over ninety-one years old, and the appeal has not been pressed with any degree of diligence.

Yours very truly,

cc—Vivian G. Gentleman, Esq.
Attorney for Petitioners
Irving Kirschenbaum, Esq.
Mr. Robert L. Gill,
Committee

Exhibit A to Foregoing Letter

Extracts from previous papers filed by Goldstein, Judd & Gurfein, Esqs.*

1. Affirmation of Orrin G. Judd dated September 8, 1967, printed in appellant's appendix in 13,457N, pp. A7-A10.

"5. Upon being substituted as attorneys for respondent, *my firm* immediately made a complete and thorough review of the complicated and lengthy proceedings which had been had in this action prior to our substitution."

"7. . . . *With the aid of lawyers in my firm* I conducted extensive research on the legal issues presented by the foregoing motions and cross motions, including the question of the propriety of the Sheriff's panel from which a jury was selected."

"9. From the size of the record, the complexity of the issues and the amount involved, the proceedings required extensive and skillful services compressed within a relatively brief period of time."

"10. The peculiar nature of the Sheriff's Panel required substantial services in obtaining material for submission to the court in connection with this important branch of the case."

"12. Five separate memoranda of law were prepared in connection with the presentation of the motions, the review of issues raised on the argument, and controversies concerning the form of order. The following list of such memoranda is adequately descriptive:

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* All italics supplied.

Appendix A

1. Brief in Support of Cross-motion to Deny Confirmation of Commissioner's Report, etc. May 4, 1967
2. Reply Brief in Support of Cross-Motion to Deny Confirmation of Commission's Report, etc. May 11, 1967
3. Respondent's Memorandum After Argument June 6, 1967
4. Respondent's Reply Memorandum After Argument June 13, 1967
5. Respondent's Memorandum in Support of Proposed Counter-Order July 18, 1967

The necessary analysis of 1300 pages of testimony, and research into a variety of legal issues, required a great amount of time, extending into weekends."

"16. . . . On almost every day for the four month period there was some aspect of the Gair matter which required my attention *or that of my associates.* In fact, engagements are recorded in seventy-two separate days during that period."

2. The brief in support of the cross-motion to deny confirmation, which was submitted at Special Term, devotes pages 4-9 to a discussion of the facts, to establish that "the weight of evidence supported the respondent's right to manage her own life." Specific references are made to the following pages of the transcript: 398, 542, 361-4, 568, 932, 933, 941, 936, 569, 641, 673, 618, 730, 555, 574-5, 1075, 1079, 403, 598, 37, 46, 1351-2, 544, 715, 531-3, 622, 587, 534-5, 558, 164-5, 122-3, 195, 452-3, 692.

Appendix A

3. Respondent's reply memorandum after argument, submitted at Special Term, devotes three pages to the alleged insufficiency of the evidence. Here specific references are made to the following pages of the transcript: 449, 975, 177, 692, 967, 876, 880, 916, 895, 847, 848, 824, 488, 985, 882, 750, 887, 899.

4. In opposition to the appeal in 13,457N, petitioners submitted an appendix of 61 pages, containing extracts from the transcript. This was thoroughly reviewed by Messrs. Goldstein, Judd & Gurfein, because their reply brief for respondent-appellant on that appeal devotes five pages (2-6) to answering those facts. Specific references are made to the following pages of the transcript: 449, 975, 692, 697, 876, 880, 916, 895, 847, 848, 824, 488, 985, 882, 750, 907, 1036, 1236, 1041, 1231, 398, 542, 361-4, 568, 932, 933, 941, 936, 569, 641, 673, 618, 730, 891, 531-3, 622, 587, 534-5, 558.